



## **COMMODITY FUTURES TRADING COMMISSION**

### **17 CFR Part 43**

### **RIN Number 3038-AD08**

### **Real-Time Public Reporting of Swap Transaction Data; Correction**

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Final Rule; correction.

**SUMMARY:** The Commodity Futures Trading Commission (“CFTC” or “Commission”) published the Real-Time Public Reporting of Swap Transaction Data (“Real-Time Public Reporting”) rule and an accompanying preamble in the Federal Register on Monday, January 9, 2012 (77 FR 1182). This document makes an editorial correction to language of the preamble that conflicted with the rule text of the final rule.

**DATES:** Effective Date: These corrections are effective **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

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### **SUPPLEMENTARY INFORMATION:**

#### **I. BACKGROUND**

The Commission published the final rule entitled Real-Time Public Reporting of Swap Transaction Data (“Final Rule”) in the Federal Register on January 9, 2012, (77 FR 1182), adopting rules to implement a framework for the real-time public reporting of swap transactions and pricing data for all swap transactions. The final rule, which became effective on March 9, 2012, contains a sentence in a footnote that created an inconsistency as to the type of swap transactions that may be considered “publicly reportable swap transactions” under the Final Rule. The sentence is corrected in this release to eliminate the inconsistent

language in the footnote and, thus, make clear that certain, and not all, covered transactions as described in Sections 23A and 23B of the Federal Reserve Act may be considered “publicly-reportable swap transactions.”

## **II. Summary of the Correction to the Real-Time Public Reporting Rule**

The Commission received inquiries whether it considered all “covered transactions” between affiliates, as defined in Sections 23A and 23B of the Federal Reserve Act<sup>1</sup> to be “publicly reportable swap transactions.” As published, the last sentence of footnote 44 of the Final Rule reads: “The Commission considers any covered transaction between affiliates as described in Sections 23A and 23B of the Federal Reserve Act to be publicly reportable swap transactions.” This sentence unintentionally conflicts with the text of §43.2 defining “publicly reportable swap transaction,” and with the preamble of the Final Rule.

Section 43.2 defines the term “publicly reportable swap transaction,” and also provides an example of certain swap transactions that do not fall within the definition. Under §43.2, in paragraph (2)(i) of the definition of “publicly reportable swap transaction,” certain inter-affiliate trades may not be reportable as the rule excludes from the definition of reportable swap transactions: “Internal swaps between one hundred percent owned subsidiaries of the same parent entity.” Paragraph (3) of the definition states that the examples of transactions set forth paragraph (2) of the definition that do not fall within the publicly reportable swap transaction definition “represent swaps that are not at arm’s length and thus are not publicly reportable swap transactions, notwithstanding that they do result in a corresponding change in the market risk position between two parties.” Indeed, there may be covered transactions as defined in Sections 23A

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<sup>1</sup> Section 608 of the Dodd-Frank Act adds to paragraph 7 of the definition of “covered transaction” in Section 23A of the Federal Reserve Act (12 U.S.C. 371(c)): “a derivative transaction, as defined in paragraph (3) of section 5200(b) of the Revised Statutes of the United States (12 U.S.C. 84(b)), with an affiliate, to the extent that the transaction causes a member bank or a subsidiary to have credit exposure to the affiliate.” Hence, all derivatives transactions will be subjected to Section 23A of the Federal Reserve Act to the extent that they cause the bank to have credit exposure to the affiliate. Section 23B of the Federal Reserve Act contains an arm’s-length requirement stating that a member bank and its subsidiaries may engage in any covered transaction with an affiliate only “on terms and under circumstances, including credit standards, that are substantially the same, or at least as favorable to such bank or its subsidiary, as those prevailing at the time for comparable transactions with or involving other nonaffiliated companies, or in the absence of comparable transactions, on terms and under circumstances, including credit standards, that in good faith would be offered to, or would apply to, nonaffiliated companies.”

and 23B of the Federal Reserve Act that are not at “arm’s length” transactions under Part 43, but which nevertheless result in a corresponding change in market risk between the two parties. Under §43.2, those types of covered transactions would not be “publicly reportable swap transactions.”

Further, correction of the footnote 44 sentence will remove any conflict with the preamble language. The preamble language immediately preceding the footnote states: “As adopted, the definition of a publicly reportable swap transaction also provides, by way of example, that internal transactions to move risk between wholly-owned subsidiaries of the same parent, without having credit exposure to the other party would not presently require public dissemination because such swaps are not arm’s-length transactions.” Again, there may be covered transactions as defined in Sections 23A and 23B of the Federal Reserve Act that may be internal transactions to move risk between wholly-owned subsidiaries of the same parent, without having credit exposure to the other party. Those transactions thus do not require public dissemination because they are not arm’s-length transactions.

Accordingly, this document revises the language of the last sentence of footnote 44 on page 1187 of the Federal Register to read as follows: “Certain covered transactions between affiliates as described in Sections 23A and 23B of the Federal Reserve Act may be considered to be publicly reportable swap transactions.”

For compliance purposes, this correction of the footnote sentence will result in a more accurate reflection of the regulatory language that the determination of whether a covered transaction under Section 23A or 23B of the Federal Reserve Act is a publicly reportable swap transaction should be made by the parties to the swap, rather than the Commission. In turn, the Commission’s review of such determination will be based upon the standards as set forth in §43.2.

### **III. Correction**

In FR Doc. 2011-33173 appearing on page 1182 in the Federal Register on Monday, January 9, 2012, the following correction is made:

On page 1187, revise the last sentence of footnote 44 to read, “Certain covered transactions between affiliates as described in Sections 23A and 23B of the Federal Reserve Act may be considered to be publicly reportable swap transactions.”

Dated: August 7, 2012

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